

Court of Appeals, State of Michigan

ORDER

In re Williams/Thomas/Royster/Johnson/Cuff Minors

Mark J. Cavanagh
Presiding Judge

Docket No. 303840

Henry William Saad

LC Nos. 2010-000331-NA; 2010-000332-NA; 2010-000333-NA; 2010-000334-NA; 2010-000335-NA; 2010-000336-NA; 2010-000337-NA

Elizabeth L. Gleicher
Judges

The Court orders that the motion for (1) production of confidential file; and (2) preparation of transcripts; and (3) additional time to file brief on appeal is DENIED.

Gleicher, J. would grant the motions for production of the confidential file, preparation of transcripts, and for additional time to file appellant's brief on appeal. The referee took "judicial notice" of the entire record when she recommended the termination of respondent's parental rights in 2011. The entire record included the 2007 proceedings and the confidential files for the 2007 proceedings. The trial court has apparently refused to allow respondent's appellate counsel access to the 2007 confidential file, and has refused to transcribe the hearings conducted during the 2007 proceedings.

I would order production of the 2007 confidential files and transcription of the hearing records. Because a trial court may consider evidence on the whole record in making its best interest determination, the confidential file and previous hearings are essential to respondent's ability to prepare and present her appeal. *In re Trejo*, 462 Mich 341, 356-357 (2000). The trial court must "consider all hearings conducted pursuant to MCLA 712A.12... MCLA 712A.19... and MCLA 712A.19a... as a single continuous proceeding. Therefore, evidence admitted at any one hearing is to be considered evidence in all subsequent hearings." *In re LaFluve*, 48 Mich App 377, 391 (1973). Moreover, this Court requires the information to properly review the proceedings.

MCR 3.977(H)(2) provides that at the termination hearing, “[t]he parties must be afforded an opportunity to examine and controvert written reports received by the court...” The confidential file containing written reports constitutes an important part of the record as do the transcripts of prior proceedings. MCR 7.201(A)(1). Just as there must be no “secret evidence” at a termination trial, there should be no undisclosed evidence on appeal. In my view, fundamental due process principles entitle respondent’s appellate counsel to review the entire record, and thus I dissent from the proposed order.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

Date

Larry S. Royster
Chief Clerk